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In the Supreme Court of the United States

OCTOBER TERM, 1940.

No. 469

MANUEL PELELAS,

Petitioner,

VS.

CATERPILLAR TRACTOR COMPANY,

Respondent.

PETITION FOR WRIT OF HABEAS CORPUS
To the United States Circuit Court of Appeals
For the Seventh Circuit, and
BRIEF IN SUPPORT OF PETITION

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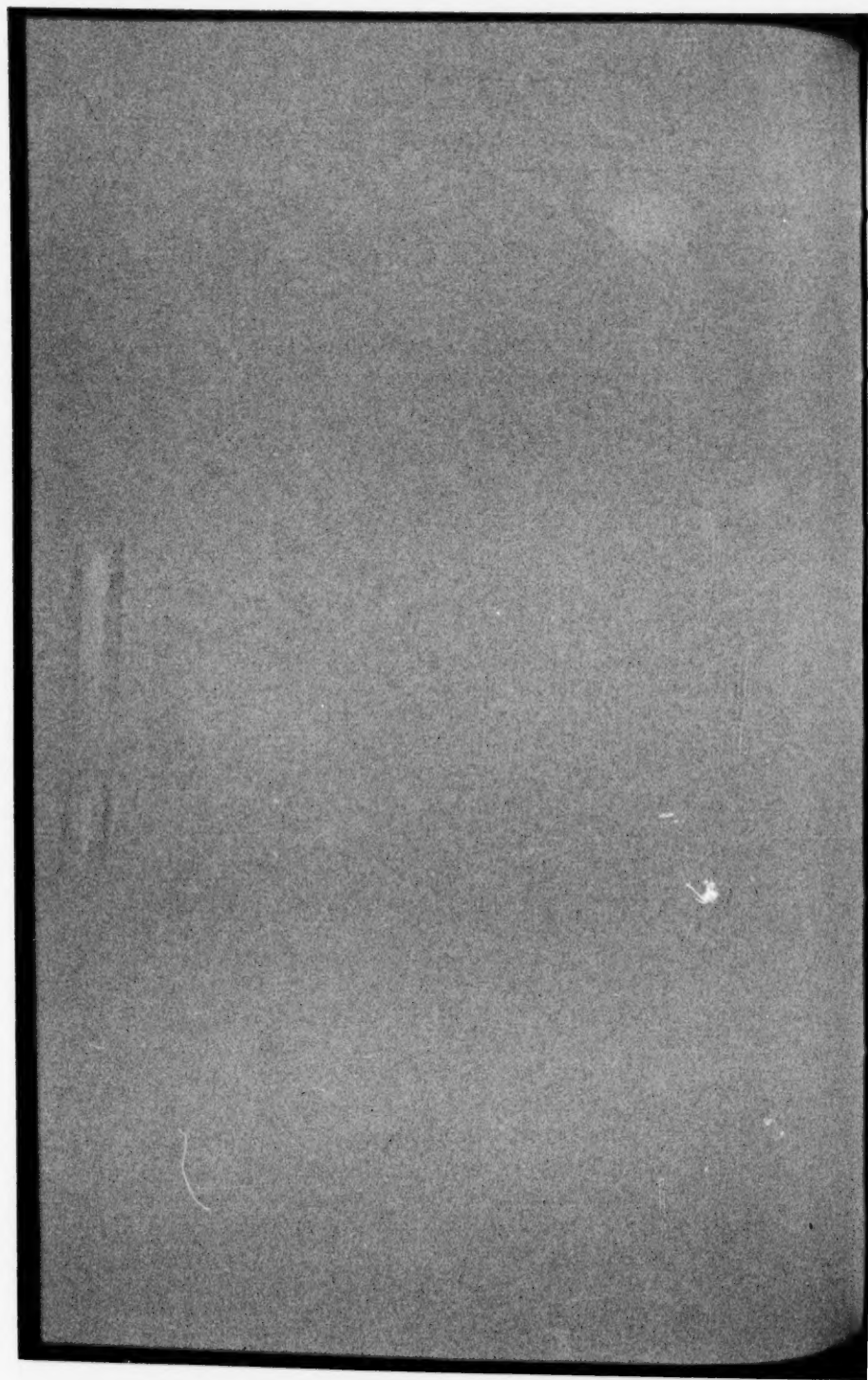
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In the Supreme Court of the United States

OCTOBER TERM, 1940.

No.

MANUEL PELELAS,
Petitioner,

vs.

CATERPILLAR TRACTOR COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Supreme Court of the United States:

The petition of Manuel Pelelas for a writ of certiorari, directed to the United States Circuit Court of Appeals for the Seventh Circuit, to bring before the Supreme Court the case of

MANUEL PELELAS,
Plaintiff-Appellant,

vs.

CATERPILLAR TRACTOR COMPANY,
Defendant-Appellee.

Said petitioner respectfully shows to this Honorable Court as follows:

SUMMARY STATEMENT.

The problems in this law suit concern the right of the insured employees of Caterpillar Tractor Company to share in dividends received by their employer from a Group Policy of insurance, the premiums on which have been paid largely by these insured employees.

This is a class action. The plaintiff was formerly a Caterpillar employee and an insured under that Group Policy. He sues in a representative capacity to impose a constructive trust upon those dividends. Plaintiff is seeking to compel Caterpillar to divide the dividends with its insured employees in aliquot shares according to the amount which they have paid by way of premium.

The opinion of the Seventh Circuit Court of Appeals raises two questions:

(1) Has plaintiff set forth in his complaint the right to share in the dividends arising out of the Group Policy?

(2) Is plaintiff properly representative of the employees who are or were insured through that policy?

The Circuit Court of Appeals decided both of those questions in the negative.

That Court is mistaken in its opinion. (a) It holds that plaintiff has not stated a cause of action in his complaint. For he did not plead any contract between the Caterpillar Tractor Company and its insured employees whereby Caterpillar had agreed to distribute dividends among the insured. And, therefore, plaintiff has no basis for recovery on behalf of the insured.

(b) It misconceives the requirements for adequate representation in a class action under Rule 23 of the Federal Rules of Civil Procedure and demonstrates fully a lack of comprehension of that rule.

REASONS FOR THE WRIT.

Both questions involved in this case are of first instance.

It has never been decided whether employees insured under a plan of group insurance have a right to share in dividends declared by the insurance company and paid to the employer who holds the Master Policy.

Nor has it ever been decided who is a proper party to represent these insured employees within the meaning of Rule 23 of the Federal Rules of Civil Procedure.

The Circuit Court of Appeals erroneously decided both questions at issue. It held in the first instance that no right on the part of the insured employees to share in dividends received by Caterpillar from the insurance company could be established under plaintiff's complaint.

The Circuit Court of Appeals also decided that plaintiff, an insured employee having a compatible interest equal to the average of the others so insured, was not a proper representative within Rule 23 of the Federal Rules of Civil Procedure.

In the Caterpillar Tractor Company are many thousands of employees who are or were insured under a Group Policy of insurance. What right they have to the dividends paid to Caterpillar should be determined by this Honorable Court.

The employees of the Caterpillar Tractor Company are not in a singular position. The group plan in recent years has been put into effect by employers on an increasingly wide scale. All over America, thousands upon thousands of employees are insured under similar plans of group insurance. The question of their right to share in dividends received by their employers has not been decided and should be disposed of.

This question can be disposed of only through a representative action. It is also essential, therefore, that it be decided as to who is a proper representative within Rule 23.

THE QUESTIONS PRESENTED.

The questions presented by this petition are as follows:

(1) Does the plaintiff's complaint state a right on the part of those employees of the Caterpillar Tractor Company insured under a group insurance policy to share in the dividends that have been paid to Caterpillar under that policy?

(2) Is the plaintiff a proper party to maintain this action on behalf of the other insured employees?

PRAYER.

Wherefore your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding that Court to certify and send to this Court for its review and determination, on a day certain therein to be named, the full and complete transcript of the record and proceedings in the case, numbered and titled on its docket No. 7181, Manuel Pelelas, Plaintiff-Appellant, v. Caterpillar Tractor Company, Defendant-Appellee, and that said Decree and Judgment of the United States Circuit Court of Appeals for the Seventh Circuit may be reversed by this Honorable Court, and your petitioner may have such other and further relief in the premises as to this Honorable Court may seem equitable and just and that the cause be remanded to the District Court for a determination of the issues of the case.

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